

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 694 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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SHUBHSHANKAR DIVYASHANKAR BHANDARI

Versus

NOORBHAI HASANALI VORA.  
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Appearance:

MR HJ NANAVATI for Petitioner  
NOTICE SERVED for Respondent No. 1  
MR KS NANAVATI for Respondent No. 6  
NOTICE UNSERVED for Respondent No. 8  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 01/03/2000

ORAL JUDGEMENT

#. In this Revision Application the petitioner has challenged the order of the learned Civil Judge (SD) Gondal passed below exh.49 in Special Darkhast No. 12 of 1982. Present petitioner had filed a Suit being Regular

Civil Suit No.371 of 1976 against deceased Noorbhai Hasanali Vora for getting a decree for possession on the ground of arrears of rent. Aforesaid suit came to an end by way of settlement between the parties and accordingly a consent decree was passed on 21.8.1981. As per the said consent decree, present petitioner was entitled to receive Rs. 16,000/- + Rs.13,500/- from the judgment debtor. Since the judgment debtor had not complied with the said consent decree, present petitioner filed execution application which was numbered as Darkhast No.923 of 1983. It seems that said Darkhast was dismissed for default for non payment of the process fees. In the meanwhile, the respondent no.6 herein M/s Praful Timbers had filed an application for execution of its decree against the heirs of said deceased Noorbhai Hasanali Vora who are respondents nos 2 to 5 herein. Respondent no.6 herein is also a decree holder for a sum of Rs.36,650.03 p. and for the purpose of recovering the said amount, he had filed the said execution application being Darkhast No. 12 of 1982. In the said execution application, the learned Civil Judge (SD) was pleased to issue prohibitory orders under order 21 Rule 54 of the Civil Proc.Code. Thereafter notices were issued for the purpose of the sale of the property of the judgment debtor. Ultimately, the property of the said judgment debtor was auctioned and it seems that the price of Rs. 45,000/- was fetched in the said sale proceedings and the said amount was deposited before the executing court. Thereafter respondent no.6 herein gave an application exh.33 for the purpose of distributing the amount in his favour and the decree holder i.e. the respondent no.6 herein was paid Rs. 39,485.03 i.e. the amount which he was entitled to receive. Present petitioner also gave an application at exh.36 for ratable distribution of his claim of Rs. 29,661/-. The respondent no.6 herein was allowed to withdraw the amount which he was entitled from Rs. 39,485.03 p. and the present applicant had filed an application exh. 49 for issuance of a direction directing the respondent no.6 to redeposit the amount which is withdrawn by the respondent no.6. It seems that he had also filed an application exh.52 requesting the executing court to keep the R & P of Darkhast No. 23 of 1983 along with the Darkhast of respondent no.6 herein. The learned Civil Judge (SD), Gondal ultimately, by his order dated 7.2.1985 rejected the applications exhs. 49 and 36. Aforesaid order is challenged by the petitioner-decree holder by way of this Revision Application.

#. This court while admitting the petition has passed an order that the respondent no.6 shall not withdraw the

amount lying with the executing court. At the time of hearing this Revision Application today Mr. H.J.Nanavati learned advocate for the petitioner has pointed out that after the withdrawal of the amount of Rs.39,485.03 p, the remaining amount is still lying with the executing court and that atleast the amount which is lying with the court should be ratably distributed and if there is no other claimant, it should be given to the petitioner. On the other hand Mr. K.S.Nanavati, learned advocate for respondent no. 6 argued that so far as the respondent no.6 is concerned his claim is already satisfied and so far as any amount which is lying for distribution in the executing court is concerned, it is between the court and such other claimants.

#. The Trial Court found that the decree holder respondent no. 6 herein has filed an application exh.33 for distribution of the amount on 12.1.84 and that the purchaser had already deposited the amount of Rs. 45,000/- on 28.12.83 and that the present petitioner came before the court with an application exh.36 after the said amount of Rs. 45,000/- was already deposited by the purchaser and that the present petitioner had no right to file such application exh.36 after the receipt of such assets and in view of section 73 of Civil Proc.Code, the applicant i.e. present petitioner was not entitled to get ratable distribution and it will be open for the petitioner to take appropriate proceedings by filing a separate suit as per sub clause 2 of section 73. It was therefore, found that there was no question of asking the respondent 6 to redeposit the amount again in the court. So far as the aforesaid reasoning of the Trial Court is concerned, I do not find any infirmity or illegality in the order. Therefore, there is no substance in the say of the present petitioner that respondent no.6 should be asked to redeposit the amount. In the circumstances, the order of the Trial Court passed below application exh.49 is required to be confirmed. However, Mr. K.S. Nanavati stated that he has no objection if the petitioner is paid his claim from the amount which is lying with the executing court as in view of the interim order passed by this court in the year 1985, said amount is still lying with the executing court. In that view of the matter it would be open for the executing court to pass appropriate order of distribution of the amount which is lying in the executing court. If there is no other claimant, naturally whatever amount is lying in the executing court will be required to be distributed to the present petitioner or the court has to decide again the question of redistribution in accordance with law. However, for the purpose of decision regarding the

distribution of the amount which is already lying with the executing court, the application exh.36 filed in Regular Civil Suit No. 371/76 , is remanded back to the executing court and the executing court may dispose of the same in accordance with law. So far as the application exh.49 is concerned the same is treated as finally decided, meaning thereby that the respondent no.6 may not have to redeposit any amount in the court. It is clarified that it would be open for the petitioner to take appropriate proceedings against the respondent no.6 by way of filing a suit for the purpose of his claim against the respondent no.6 and that liberty has also been granted by the Trial Court in its judgment. This order will have only limited effect i.e. prayer of the petitioner for redeposit of the amount is rejected. The executing court may therefore, dispose of the question of re-distribution of the amount which is lying before the executing court. Thus the order passed by the executing court below application 49 is confirmed and application exh.36 is remanded back to the executing court for disposal of the same in view of the observations made hereinabove. The Revision Application is accordingly partly allowed. Rule made absolute to the aforesaid extent. No order as to costs.

(P.B.Majmudar.J)

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